United Nations A/HRC/37/NGO/98

General Assembly

Distr.: General
8 February 2018

English only

Human Rights Council
Thirty-seventh session
26 February-23 March 2018
Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Joint written statement* submitted by Al Mezan Centre for Human Rights and the World Organisation against Torture, non-governmental organizations in special consultative status

The Secretary-General has received the following written statement, which is hereby circulated in accordance with Economic and Social Council resolution 1996/31.

[2 February 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.18-01945(E)
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Impunity for torture, ill-treatment and related practices in Israel*

Al Mezan Centre for Human Rights, World Organisation Against Torture and Lawyers for Palestinian Human Rights (the Organizations) address the Council concerning the Israeli government's policy and practice in regard to torture and ill-treatment, which is delineated in 23 serious incidents of alleged torture and ill-treatment cited in the Organizations' joint urgent action to UN Special Procedures (see below) and consolidated by the recent landmark Israeli High Court of Justice (HCJ) ruling in the Abu Ghosh case.

During the January 2018 third Universal Periodic Review of Israel, a large number of states explicitly addressed Israel's practices and policies that relate to and facilitate torture and ill-treatment. Within the format of state recommendations to the country under review, the states called on Israel to address its widespread use of administrative detention and child detention; effectively ban torture in all its forms; ratify the optional protocol to the UN Convention against Torture (UN CAT); or to integrate the UN CAT definition of torture and the Committee against Torture recommendations into Israeli domestic legislation and policy.1

In August 2017, the Organizations submitted an urgent appeal to UN Special Procedures that contained evidence of 23 incidents of alleged torture and cruel, inhuman or degrading treatment or punishment (CIDTP) of Palestinian residents from Gaza that took place between 2014 and 2017 during their arrest and detention. Of the 23 alleged serious incidents of abuse at the hands of Israeli State agents, 16 individuals remain in Israeli prisons, and seven have been released back into Gaza.

The facts described in the urgent action are illustrative of a pattern of widespread and systematic use of torture and CIDTP against Palestinian detainees in general, including residents of the Gaza Strip, held in Israeli custody. This practice is emboldened by Israel's flawed legal and judicial system that enables rather than deters the use of torture and CIDTP by failing to hold perpetrators to account. For example, of the 23 individual cases addressed in the urgent action, 11 individuals submitted criminal complaints to the Inspector for Interrogee Complaints (IIC, the Justice Ministry agency dealing with complaints of torture and CIDTP by the Israeli security agency (ISA)), and eight individuals submitted criminal complaints to the Military Advocate General alleging misconduct and abuse by soldiers during the ground invasion of Gaza in 2014. The IIC has not opened any investigations and closed two of those files. The Military Advocate General opened three investigations, but closed two of those, and in addition closed two further files without investigation, of the 23 cases.

In one case, a young man with an intellectual and psychosocial disability (schizophrenia) was denied access to legal counsel for 16 days after his arrest, and then declared unfit for trial and subsequently held in isolation for six months, during which time his health dramatically deteriorated. He is currently being held in the regular prison section of Al Ramla instead of being returned to Gaza or placed in a hospital, and has been informed through his lawyer that he will be tried.

The 23 cases in the urgent action illustrate the unacceptable dangers faced by Palestinians held in Israeli military custody that are caused in large part by Israel's structurally deficient legal and accountability system that purposefully shields torture and CIDTP perpetrators and allows for blanket impunity. It is worth noting that after the submission of at least 1,100 complaints to the IIC since 2001, the agency recently opened its first criminal investigation.2 It is unclear

1 See, Human Rights Council 'Draft report of the Working Group on the Universal Periodic Review' (Israel) 25 January 2018 (A/HRC/WG.6/29/L.12) Available here: https://www.upr-info.org/sites/default/files/document/israel/session_29_-_january_2018/a_hrc_wg.6_29_l.12.pdf

2 The Public Committee Against Torture in Israel, 'In spite of firm statements against the use of torture, Israel's High Court of Justice refuses to recognize the torture used in interrogation'. Available here: http://stoptorture.org.il/cwsd.php?bXYxJzQ0JA__/PzE_/S21reW12eyJTfmRgYCBRcn9hbHBq!1dCPyU2PD8iJiE5LXxxYg__.pdf

whether the investigation will result in a change to practice or policy concerning accountability for the use of torture and ill-treatment in Israel. Fundamentally, it is a system that prevents any meaningful deterrence and therefore enables, or even encourages, the repetition of torture and ill-treatment practices.

This is most clearly indicated by Israel's HCJ decision in 1999 to effectively limit the criminal liability of interrogators using violence to interrogate prisoners.3 Although the Court stated that those under questioning must not be subjected to torture or cruel and inhuman treatment, recognizing that respect for dignity and basic rights must be adhered to,4 it nonetheless affirmed that Israeli interrogators would be exempt from criminal sanctions in a situation of 'necessity' as per the Israeli Penal Code. This legal loophole effectively permits the commission of crimes if the interrogator believes that in doing so the imminent loss of lives may be prevented.5 Such protection of Israeli Security Agents extends to criminal and civil responsibility.6 Subsequently, the use of the "necessity defense" has been reported in dozens of interrogations every year, and is therefore indicative of a systemic disregard for the absolute prohibition of torture and CIDTP provided by international law.7

The construction of institutionalized impunity for the use of torture and CIDTP has been consolidated by the recent landmark HCJ decision, in December 2017, to uphold the decision of Israel's Attorney General not to open a criminal investigation into the cases of the ISA personnel who tortured a Palestinian man, Asad Abu Ghosh. The ruling is, in effect, a refusal of the Court to recognize some of the practices used by Israeli State agents as torture, despite their consideration as such under international law8. This decision further consolidates protections for perpetrators of torture and undermines the absolute prohibition of torture in international law. In parallel, the State of Israel has still not promulgated a law criminalizing torture, in spite of its public commitment to do so in May.

Since the start of its occupation in 1967, Israel has used imprisonment of members of the Palestinian community, in particular of individuals engaged in resisting the occupation, as a political tool to repress and maintain control over Palestinian society. The Organizations note as well that prisoners continue to be deprived of access to counsel and visitation for the days and weeks of the interrogation, and that trials continue to be replete with secret evidence, barring the way for an effective discussion of the interrogation techniques routinely used. Thus, safeguards against torture are extremely limited, permitting this practice to flourish. Imprisonment is intended to undermine their ability to oppose the Israeli occupation by criminalizing political affiliation and activities, obstruct the daily lives and political and social fabric of Palestinian communities, and facilitate the use of different methods of torture and CIDTP to target and intimidate individuals and communities, including children. Ahed Tamami9, a 16-year-female activist from the village of Nabi Saleh in the occupied West Bank, is a recent victim of this policy. She is one of 313 children currently in military detention.10

3 Public Committee Against Torture v. Israel HCJ 5100/94, the Supreme Court sitting as the High Court of Justice

4 ibid. Paragraph 18

5 Section 34 of Israeli Law No. 626/1996, Penal Law

6 UN Committee Against Torture, 'Concluding Observations of the Committee Against Torture CAT/C/ISR/CO/4' (2009) para 14 <http://www2.ohchr.org/english/bodies/cat/docs/cobs/CAT.C.ISR.CO.4.pdf> accessed 20 May 2017

7 Public Committee Against Torture in Israel, 'Stop Torture: Independent Report to the UN Committee Against Torture Towards the Review of the Fifth Periodic Report on Israel' (2016) 6 <http://stoptorture.org.il/wp-content/uploads/2016/06/INT_CAT_NGO_ISR_23475_E-Last.pdf> accessed 20 May 2017.

8 See esp. Paragraph 36 in the HCJ ruling – "the definition of specific methods as "torture" depends on concrete circumstances, even when one is discussing interrogative methods explicitly recognized as "torture" by international law."

9 Amnesty International, Israel/oP: Israeli authorities must release Ahed Tamimi immediately. Available here: https://www.amnesty.org/en/press-releases/2018/01/israelopt-israeli-authorities-must-release-ahed-tamimi-immediately/

10 Defence for Children International Palestine, 30 November 2017

The policies and practices pursued by the Israeli authorities concerning patient access to medical care in Gaza leave these individuals extremely vulnerable to degrading treatment and abuse. Al Mezan's recent report on the issue[11] highlights the cases of 20 patients, including 11 women and three children, who died after their permit requests to exit Gaza for medical care were delayed or rejected by the Israeli authorities. Increasingly, the processing of permit requests is prolonged beyond the date of the hospital appointment or the permit is denied, leaving patients to face a serious deterioration in their health condition, or death. Further, the Israeli government's control over Gaza's border crossings with Israel and regulation of movement in and out, often includes the detention and ill-treatment of patients, and coercion by Israeli security agents to give information in exchange for crossing permits.

By imposing a system that severely restricts access to healthcare and at times includes coercive measures, Israel is in serious violation of its obligations as an occupying power and a duty bearer under international law, notably concerning the fundamental right to life and the absolute prohibition on the use of torture and CIDTP.

Within the above-described context, we welcome the focus of a large number of states during the Universal Periodic Review on the urgent and critical human rights issue of Israel's detention policies and practices applied to Palestinians. We submit that it is vital and long overdue that Israel undertakes a substantial reform of its detention policies and practices that often amount to permitting acts of torture and CIDTP with impunity. We urge states to engage constructively with Israel for the purpose of effectively undertaking this necessary reform, with the crucial first step being to fully integrate the UN CAT definition of torture into domestic legislation with a view to ensuring accountability of perpetrators of abuse and torture. We urge states to denounce the rulings that sanction torture practices and to encourage international oversight, such as country visits and inquiries by international mechanisms, including the UN CAT and UN Special Procedures, in order to investigate these practices.

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*Lawyers for Palestinian Human Rights, NGO without consultative status, also shares the views expressed in this statement.

11 The 20 deaths cited are those that Al Mezan was able to document—the figure is not to be taken as inclusive of all deaths in 2017. See page 21 of Al Mezan's report, 'Medical Care Under Siege: Israel's Systematic Violation of Gaza's Patient Rights'. Available here: http://mezan.org/en/post/22333